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No. 85-1188

In The
Supreme Court of the United States
October Term, 1985

MICHAEL THOMAS ROSE,
Petitioner,

vs.

THE SUPREME COURT OF THE STATE OF COLORADO,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the petition for certiorari should be denied as jurisdictionally out of time.

2. Whether special and important reasons exist for the exercise of this court's discretion to grant a writ of certiorari in this case.

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OPINIONS BELOW

The 1976 report of the bar committee of the State Board of Law Examiners (the "bar committee"), recommending the denial of Rose's application for admission to the Colorado bar, appears in petitioner's appendix C at pp. 6a through 13a. The January 6, 1977 order of the Colorado Supreme Court denying Rose's application for admission to the Colorado bar appears in petitioner's appendix D at p. 14a. The minute order of the Colorado Supreme Court denying Rose's April 8, 1977 petition requesting the Colorado Supreme Court to reconsider its January 6, 1977 order was entered on or about April 21, 1977. *See* amended petition for admission, *In the Matter of the Application of Michael Thomas Rose*, respondent's

appendix E at pp. 27b through 29b. The January 21, 1980, special master's order appears in petitioner's appendix F at pp. 30a and 31a. The 1981 special master's report, which recommended Rose be admitted to the Colorado bar, appears in petitioner's appendix E at pp. 14a through 29a. The October 27, 1982, letter from David W. Brezina, Clerk of the Colorado Supreme Court, in response to Rose's motion to withdraw rules and orders of confidentiality, appears in petitioner's appendix B at pp. 3a through 5a. The order of the Colorado Supreme Court denying Rose's July 2, 1985 petition for relief appears in petitioner's appendix A at pp. 1a and 2a.

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JURISDICTION

Following the January 6, 1977 order of the Colorado Supreme Court denying Rose's first application for admission to the Colorado bar, Rose submitted a petition, based in part upon the due process clause of the fourteenth amendment to the United States Constitution, requesting the Colorado Supreme Court to amend the order and admit him or, in the alternative, to void the order and grant him a *de novo* hearing. Rose's April 1977, petition is reproduced as respondent's appendix A at pp. 1b through 5b. The petition for reconsideration was denied by the Colorado Supreme Court on April 21, 1977.

On October 18, 1982, Rose filed with the Colorado Supreme Court a motion to withdraw rules and orders of confidentiality. Petitioner's appendix W at pp. 235a through 239a. By letter dated October 27, 1982, the Colo

rado Supreme Court, through its clerk, granted the request to waive the rules and orders of confidentiality to the extent provided in such letter. Petitioner's appendix B at pp. 3a through 5a.

On July 2, 1985, Rose filed a petition for relief in the Colorado Supreme Court reasserting the factual allegations and legal arguments originally made in his April 8, 1977, petition, reasserting the factual basis for his October 18, 1982 request for relief from rules and orders of confidentiality, and raising arguments based upon the First Amendment to the United States Constitution relating to such rules and orders. Rose's July 1985, petition is reproduced as respondent's appendix B at pp. 6b through 22b. The Colorado Supreme Court denied the petition on October 17, 1985. The petition for writ of certiorari was filed with this court on January 15, 1986. Jurisdiction of this court is invoked pursuant to 28 U.S.C. sec. 1257(3) (1970) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

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APPLICABLE CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

U.S. Sup. Ct. R. 17, 28 U.S.C., Appendix (1982)

U.S. Sup. Ct. R. 20, 28 U.S.C., Appendix (1982)

U.S. Sup. Ct. R. 21, 28 U.S.C., Appendix (1982)

Colo. R. Civ. P. 216, reproduced as appendix C, hereto, at pp. 23b and 24b.

Colo. R. Civ. P. 217, reproduced as appendix D, hereto, at pp. 25b and 26b.

STATEMENT OF THE CASE

Petitioner first applied for admission to the Colorado bar in 1975. After an investigation of his moral and ethical qualifications, including two hearings before the bar committee, the Colorado Supreme Court, on January 6, 1977, denied his application for admission. In April 1977, Rose filed a petition requesting the Colorado Supreme Court either to amend its January 6, 1977 order and admit him to the Colorado bar or to void such order and grant him a *de novo* hearing. In that petition, Rose first raised the federal due process issues which he now requests this court to review. Respondent's appendix A at pp. 1b through 5b. The petition was considered by the Colorado Supreme Court *en banc* and denied on April 21, 1977.

In December 1978, Rose reapplied for admission to the Colorado bar. In his amended petition for admission Rose reiterated his procedural due process arguments relating to the proceedings which resulted in the 1977 denial of his application. Respondent's appendix E at pp. 27b through 34b. Although Rose reasserted his due process arguments he admitted the validity of the initial findings of the bar committee and stated that he understood the impropriety of the actions upon which the denial of his initial application was based. *Id.*, para. 7, at p. 33b. *See also* petitioner's appendix E at pp. 16a, 20a and 21a.

The proceedings relating to Rose's reapplication involved extensive discovery, several prehearings and a final 3-day hearing before a special master on February 16, 17, and 18, 1981. On January 21, 1980, at Rose's request, the special master entered an order concluding that

the ongoing proceedings were confidential pursuant to the then applicable Colo. R. Civ. P. 216. Petitioner's appendix F at pp. 30a and 31a. Additionally, on February 10, 1980, Rose submitted a motion to dismiss portions of a special counsel's report bearing on the proceedings which led to the denial of his first application for admission. Applicant's motion to dismiss report of special counsel, *In re the Application for Admission of Michael Thomas Rose* (February 10, 1980), respondent's appendix F at pp. 35b through 39b. In that motion Rose argued that the findings and subsequent order of denial relating to his first application were *res judicata* and that "no useful purpose would be served" by relitigating such matters. *Id.* at 35b. On October 17, 1980, the special master ruled that the matters relating to the initial proceedings would not be relitigated. *See*, petitioner's appendix E at p. 16a.

At the conclusion of the reapplication proceedings the special master recommended that Rose be admitted to the Colorado bar. *Id.* at p. 29a. Rose was admitted on May 22, 1981.

In 1979 Rose applied to this court for admission to its bar. In response to a request from the clerk of this court, and with Rose's consent, the Colorado Supreme Court furnished this court with information from its files. Petitioner's appendices N, O, and P, at pp. 135a through 149a; letter from Rose to Justice Groves, March 16, 1979, respondent's appendix G at p. 40b. The application to this court was held in abeyance pending action on Rose's reapplication to the Colorado bar. Petitioner's appendix Q at pp. 150a and 151a. Rose was admitted to the bar of this court on March 9, 1982. *In re Admission of Rose*, 50

U.S.L.W. 3714 (March 9, 1982), petitioner's appendix S at pp. 161a through 166a.

On October 18, 1982, Rose filed with the Colorado Supreme Court a motion to withdraw rules and orders of confidentiality. Petitioner's appendix W at pp. 235a through 239a. In that motion Rose asserted that he had been harmed by "false and/or defamatory statements" made in the dissent to this court's order admitting him to its bar, and that such "false" and "defamatory" statements were based upon the confidential information furnished to this court by the Colorado Supreme Court. *Id.* at 236a. Rose requested permission to address a scheduled public rulemaking hearing concerning the circumstances surrounding his application, denial and subsequent admission to the Colorado bar and requested the court to release him from all orders and rules of confidentiality relating to his admission proceedings. *Id.* at 238a. The Colorado Supreme Court responded to the motion through its clerk in a letter dated October 27, 1982. Petitioner's appendix B at pp. 3a and 4a. The Colorado Supreme Court refused Rose's request to discuss the circumstances of his particular case at the rulemaking hearing but waived the rules and orders of confidentiality with respect to the information supplied to this court, noting that no other information relating to Rose had been released by it to anyone. *Id.*

On July 2, 1985, four years after his admission to the Colorado bar and eight years from the denial of his initial application Rose filed with the Colorado Supreme Court a petition for relief in which he raised for the third time the procedural due process issues relating to his first appli-

cation for admission, submitted for the second time the factual allegations purportedly supporting his request for relief from all orders and rules of confidentiality relating to has case and raising arguments based upon the first amendment to the United States Constitution. Respondent's appendix B at pp. 6b through 22b. In his July 1985 petition Rose requested the Colorado Supreme Court to (1) declare the bar committee's findings and recommendation on his initial application to be null and void *ab initio* for lack of due process; (2) declare the Colorado Supreme Court's order refusing to admit him to the Colorado bar to be void *ab initio* for lack of due process; (3) expunge the entire record concerning his initial application; and (4) release him from all rules and orders of confidentiality. The petition was denied by the Colorado Supreme Court *en banc* on October 17, 1985. Petitioner's appendix A at pp. 1a and 2a. Rose bases his petition for writ of certiorari in this action on the Colorado court's October 1985 order.

—o—

SUMMARY OF ARGUMENT

1. Although Rose asserts as his jurisdictional basis the October 1985 order of the Colorado Supreme Court, the orders which in fact form the basis for his claims were entered in 1977 and 1982. Rose failed to appeal such orders and, in an attempt to obtain an order from which a timely appeal could be taken, reasserted his claims in his 1985 petition. His petition for writ of certiorari should, therefore, be denied.

2. The relief sought by Rose in the petition for writ of certiorari is essentially a declaration which would vindicate him with respect to the fact that he was not admitted to the Colorado bar on his first application. In order for this court to grant such relief this court would be required to act as a factfinder with respect to stale and disputed facts. Rose has been admitted to the Colorado bar. The rules applicable to his admission proceedings have been repealed. There are, therefore, no special and important reasons for granting his petition for writ of certiorari.

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ARGUMENT

I.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED AS JURISDICTIONALLY OUT OF TIME.

Although Rose asserts as his jurisdictional basis the Colorado Supreme Court's order of October 17, 1985, denying his petition for relief filed on July 2, 1985, Rose first raised the issues set forth in such petition years earlier and failed to pursue his appellate remedies from the Colorado court's initial disposition of such issues. In order to show that the applicable federal questions were timely and properly raised so as to confer upon this court jurisdiction to review a state court judgment, U.S. Sup. Ct. R. 21, 28 U.S.C., Appendix (1982) requires that a petition for writ of certiorari include not only the date and time of entry of the relevant state court judgment but also (1) the stage in

the proceedings at which the federal questions sought to be reviewed were raised, (2) the method or manner of raising them and the way in which they were passed upon by the state court, and (3) pertinent quotations of the record with specific references to the places in the record where the matter appears U.S. Sup. Ct. R. 20, 28 U.S.C., Appendix (1982) provides that the time for filing a petition for writ of certiorari runs from the date the judgment or decree sought to be reviewed is rendered and that the clerk will refuse to receive any petition which is jurisdictionally out of time.

With respect to Rose's fourteenth amendment due process claims relating to his first attempt to be admitted to the Colorado bar, the state court judgment sought to be reviewed is in fact the Colorado Supreme Court's 1977 denial of his application for admission, including its April 1977 refusal to reconsider the matter, not as Rose contends, the court's refusal, eight years later, to declare the proceedings which led to the denial void. The factual allegations which form the basis of petitioner's due process claims were reviewable in 1977 following the Colorado court's denial of his petition for reconsideration. In addition, Rose failed to supply this court with relevant information from the record concerning the stage at which and the manner in which his federal due process arguments were raised in the state court proceedings. Contrary to his assertion that he first presented his federal due process arguments to the Colorado Supreme court in his 1985 petition for relief (petition for writ of certiorari at p. 3), he had previously submitted such claims to the court. Respondent's appendices A and E, at pp. 1b through 4b and 28b and 29b, respectively.

The event which forms the basis of petitioner's claims relating to the rules and orders of confidentiality was the publication of certain information concerning the denial of his first application in the dissent in *In re Admission of Rose*, 50 U.S.L.W. 3714 (March 9, 1982). Several months after the publication of such information, Rose submitted to the Colorado Supreme Court a motion to withdraw rules and orders of confidentiality. Petitioner's appendix W at pp. 235a through 239a. The Colorado Supreme Court responded to the motion by releasing Rose from the rules and orders of confidentiality to the extent necessary to permit him to respond to the information published in this court's dissent. Petitioner's appendix B at pp. 3a and 4a. The manner in which the Colorado court disposed of that motion is in fact what Rose seeks to have reviewed here. Rose could have but failed to raise his first amendment arguments with the Colorado Supreme Court in 1982. His failure to raise his constitutional arguments when he first submitted his underlying claims to the state court should preclude this court from now considering such claims. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, fn. 16 at 483-485 (1983). In addition, by neglecting to provide this court with a copy of his July 1985 petition, Rose has failed to inform this court of the method or manner in which his first amendment claims were presented to the Colorado court. Although Rose alluded to first amendment issues in his 1985 petition to the Colorado Supreme Court, he failed to provide the court with support for his arguments either in his petition for relief (respondent's appendix B at pp. 6b through 22b) or in his supporting memorandum (excerpt from memorandum in support of petition for relief, respondent's appendix H at pp. 41b through 50b).

II.

NO SPECIAL AND IMPORTANT REASONS EXIST FOR THE EXERCISE OF THIS COURT'S DISCRETION TO GRANT A WRIT OF CERTIORARI IN THIS CASE.

Even if Rose's failure to pursue appellate remedies in 1977 and 1982 does not jurisdictionally bar this court's consideration of the issues presented here, there are no special and important reasons which exist for the granting of a writ of certiorari in this case. U.S. Sup. Ct. R. 17, 28 U.S.C., Appendix (1982), provides that review on writ of certiorari is discretionary with this court and will be granted only when there are "special and important reasons" therefor. In determining whether "special and important reasons" exist this court requires that the issues presented be of interest to the public, not just the parties. *Rice v. Sioux City Cemetery,* 349 U.S. 70, 74 (1955); *Lane & Bowler Corporation v. Western Well Works, Inc.,* 261 U.S. 387, 393 (1923). Certiorari jurisdiction is conferred upon this court "to bring up questions of importance which it is in the public interest to have decided by this court of last resort . . . not . . . merely to give the defeated party . . . another hearing." *Magnum Import Company v. Francois Joseph de Spoturno Coty,* 262 U.S. 159, 163 (1923). "Special and important reasons" imply a reach to a problem "beyond the academic or episodic." *Rice v. Sioux City Cemetery, supra* at 74. If a claim is based upon a constitutionally infirm law which has been repealed, questions regarding its constitutionality are no longer of public importance. *Rice v. Sioux City Cemetery, supra* at 75 through 77; *District of Columbia v. Sweeney,* 310 U.S. 631 (1940).

Rose has been admitted to the Colorado bar. The circumstances surrounding his first application for admission and the denial thereof are of interest only to the original parties, Mr. Rose and the Colorado Supreme Court. He admits that the rules applicable to his admission proceedings have been repealed and replaced with rules which he argues more clearly address the due process requirements of the fourteenth amendment in state bar admission proceedings. Respondent's appendix B at p. 8b. What Rose seeks from this court is vindication, a determination that rules which are no longer applicable were applied eight years ago in a manner which deprived him of due process. In addition, Rose seeks a determination not only that he was denied due process but also that because of such denial the factual findings of the bar committee were incorrect. In order for this court to reach such conclusions it would be necessary not only to perform an appellate review of the record but also to make findings with respect to disputed or stale facts by taking at face value certain allegations made by Rose in his petition for writ of certiorari. That is precisely the relief requested by petitioner from the current members of the Colorado Supreme Court in his 1985 petition.

Although Rose alleges that the Colorado Supreme Court, in denying his 1985 petition for relief, refused to grant him an opportunity to clear his name and that at least he should be afforded a name clearing hearing (petition for writ of certiorari at pp. 28 through 30), the 1985 petition clearly shows that no such relief was in fact requested. Rather, he requested the Colorado Supreme Court to determine that because he had been denied due process, the proceedings relating to the initial refusal to

admit him to the Colorado bar were void *ab initio,* and to expunge his records relating to those proceedings. Respondent's appendix B at pp. 6b, 7b and 22b. The Colorado Supreme Court properly refused to grant his request given (1) the fact that in his second application for admission to the Colorado bar Rose admitted the validity of the factual findings and the impropriety of actions on which the denial of his first application was based, (respondent's appendix E at pp. 30b, 32b, and 33b); and (2) the fact that Rose specifically asserted the defense of *res judicata* in the second round of admission proceedings with respect to factual determinations made in the first (respondent's appendix F at p. 35b).

Rose has been admitted to practice law in the State of Colorado and by such admission, his name has been cleared with respect to the fact of the original denial. A declaration from this court which somehow vindicates him with respect to the fact that he was not admitted on his first application is clearly only of interest to him. No "special or important reasons" exist for the granting of his petition to review the circumstances surrounding the denial of his first application.

Similarly, no "special or important reasons" exist for the granting of certiorari to review Rose's claims relating to the rules and orders of confidentiality applicable to his case. Colo. R. Civ. P. 216, which was applicable during the proceedings relating to Rose's admission, is no longer in effect. It is presently of interest only in connection with Rose's case and is not of interest to the public generally. Admittedly Rose continues to be affected by the rule and the special master's order which determined its applica-

bility to Rose's second round of admission proceedings (petitioner's appendix F at pp. 30a and 31a). However, as a practical matter the relief Rose seeks in this court, the ability to publicly respond to the allegations in Chief Justice Burger's dissent in *In re Admission of Rose,* has already been provided by the Colorado Supreme Court. Rose claims to be injured by "false and defamatory" statements about him contained in the Burger dissent. Such statements were based upon specific information provided to this court with Rose's consent. Rose has been relieved of the effect of Colo. R. Civ. P. 216 with respect to all the information disclosed to this court and which formed the basis for the information published in the dissent.

Rose asserts first amendment claims relating to the special master's order entered in connection with his reapplication proceedings. He argues that such order constitutes an unconstitutional prior restraint on his first amendment rights of freedom of speech analogous to gag orders entered in the context of criminal proceedings. Petition for writ of certiorari at pp. 53 through 63. The analogy is misleading. The special master's order, which by its terms relates only to the reapplication proceedings, does not of itself impose restraints upon the parties to such proceedings but rather states the applicability of then effective Colo. R. Civ. P. 216. Petitioner's complaint is not with such order, which covers matters which are irrevelant to his due process claims resulting from the first round of admission proceedings, but rather with the former rule itself.

Former Colo. R. Civ. P. 216 protected both the state's interest in receiving candid information concerning appli-

cants to its bar and the privacy interests of such applicants by requiring that all admission proceedings be kept confidential except to the extent reasonably necessary to prepare for hearing. Respondent's appendix C at p. 23b. The current rules governing bar admission procedures protect both such interests in a different way. Colo. R. Civ. P. 201.10(2) (c) now provides that admission proceedings are confidential unless the applicant requests otherwise. Petitioner's appendix BB at p. 272a. The interests of third persons and, therefore, of the state in receiving candid information concerning an applicant are protected by Colo. R. Civ. P. 201.2(5) which provides that "[a]ll information provided to the Bar Committee concerning the . . . ethical or moral qualifications of an applicant shall be absolutely privileged and no lawsuit may be predicated thereon." Petitioner's appendix BB at 252a.

Under former Colo. R. Civ. P. 216 the respective interests of the state, third persons and the applicant were furthered by the understanding and agreement of all participants that bar admission proceedings were to be kept confidential. Rose not only agreed that the proceedings relating to his applications should remain confidential, he in fact requested assurance that such would be the case. Petition for writ of certiorari at 19. At no point did the Colorado Supreme Court breach its agreement to keep Rose's records confidential. However, because of the publication of confidential information by this court, Rose now requests an order compelling the Colorado Supreme Court to breach the confidentiality of persons who furnished information in connection with Rose's applications, regardless of whether such information actually affected him.

The relief needed by Rose has been adequately provided by the Colorado Supreme Court. The relief actually requested by him is much broader than necessary to protect his interests and fails to protect the intrests of other participants in his admission proceedings.

CONCLUSION

Because of petitioner's failure to pursue his appellate remedies from the orders which in fact form the basis of his claims and because of the lack of special and important reasons for the consideration of such claims, respondent respectfully requests this court to deny the petition for writ of certiorari.

DATED this 27 day of February, 1986.

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APPENDIX A

IN THE SUPREME COURT FOR THE
STATE OF COLORADO
No. ————

In the Matter of the Application of
MICHAEL THOMAS ROSE a/k/a
MICHAEL T. ROSE,

For Admission to the Bar of the
State of Colorado

PETITION
UNDER RULE 217,
COLORADO RULES OF
CIVIL PROCEDURE

(Filed April 1977)

COMES NOW the Applicant, Michael T. Rose, by and through his attorneys, Hochstadt, Straw & Davis, P.C., and hereby petitions this Honorable Court, pursuant to Rule 217 of the Colorado Rules of Civil Procedure, as follows:

1. That by an amended en banc Order of this Honorable Court, nunc pro tunc to January 6, 1977, the recommendation of the Bar Committee of the Colorado State Board of Law Examiners (Committee) was approved.

2. That in accordance with the Report of the Bar Committee, the Committee in a five to one vote, recommended against the admission of the above Applicant to the Bar of the State of Colorado.

3. That the Committee consisted of the following members, to wit: Barnard Houtchens, Chairman, Donald S. Stubbs, Jacob L. Sherman, Warren L. Turner, Cover Mendenhall, and Senator Roger Cisneros.

4. That the Committee in its said Report indicated that it conducted extensive inquiry into the Applicant's

moral and ethical fitness, and pursuant to C.R.C.P. Rules 216 and 217, held "Hearings" on April 30, 1976 and June 4, 1976.

5. That the following members of the Committee *failed* to attend the alleged Hearing of April 30, 1976, to wit: Jacob L. Sherman, Warren L. Turner, and Cover Mendenhall.

6. That the following members of the Committee *failed* to attend the alleged Hearing of June 4, 1976, to wit: Donald S. Stubbs, Barnard Houtchens, and Cover Mendenhall.

7. That the five members of the Committee who recommended against the admission of Applicant, failed to attend either one or both of the alleged Hearings, as aforesaid; the one Committee member who attended both the Hearings and conducted part of the Committee's investigation, recommended the admission of Applicant.

8. That no transcript of either of the alleged Hearings had been prepared for the nonattending Committee members as of the date of the Committee's Report to this Court.

9. That at no time prior to the alleged Hearings, was the Applicant specifically appraised of the nature of the reasons for the Committee members failing to be convinced of Applicant's good moral character.

10. At no time during the course of the alleged Hearings was Applicant afforded the opportunity to confront and cross-examine his accusers.

11. At no time during the course of the proceedings did the Applicant have the opportunity to present evidence to the *entire* Committee.

12. Rule 217 of the Colorado Rules of Civil Procedure provides:

> ". . . No applicant will be refused admission by reason of any ethical or moral disqualification *without an opportunity to be heard* as the Court shall direct." (Emphasis added)

13. That in accordance with *Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232 (1957) the Applicant should have been given a Hearing which does not contravene the Due Process clause of the Fourteenth Amendment to the United States Constitution.

14. That in accordance with *Schware, supra*, and *Wilner v. Committee*, 373 U.S. 96 (1963) the components of Due Process in cases where a State seeks to exclude a person from the practice of law are:

a. The right to have sufficient notice given to the Applicant so that the Applicant is appraised of the reasons that he has failed to convince the Committee of his good moral character.

b. The right to present his evidence before the *entire* fact finding committee, who shall be charged with the duty of making recommendations based on all of the evidence presented, including Applicant's evidence.

c. The right to confront and cross-examine those persons whose accusations may deprive the Applicant of his livelihood.

d. The right to be given notice of and the opportunity to refute *ex parte* statements or reports.

15. As aforesaid, Applicant was not afforded the above enumerated rights as is required by Rule 217 of the

Colorado Rules of Civil Procedure, the Fourteenth Amendment to the United States Constitution, and the Constitution of the State of Colorado.

WHEREFORE, Applicant prays as follows:

1. That this Honorable Court reject the recommendations of the Committee and amend its Order to admit the Applicant to the Bar of the State of Colorado.

2. Or in the alternative void the Amended Order of January 6, 1977, and grant the Applicant the opportunity to be heard *de novo* in accordance with the Due Process requirements of Rule 217 of the Colorado Rules of Civil Procedure, the Fourteenth Amendment to the United States Constitution, and the Constitution of the State of Colorado.

Respectfully submitted,

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Address of Applicant:

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Denver, Colorado 80206

STATE OF COLORADO)
) ss.
City and County of Denver)

MICHAEL THOMAS ROSE also known as MICHAEL T. ROSE, of lawful age, being first duly sworn upon his oath deposes and says:

1. That he is the above-named Applicant.

2. That he has read the above and foregoing Petition and that the matters set forth therein are true according to his own best belief and knowledge.

.....

MICHAEL THOMAS ROSE

Subscribed and sworn to before me this 8th day of April, 1977, by MICHAEL THOMAS ROSE.

.....

Notary Public

My Commission expires:

(Original Signed and Duly Verified)

APPENDIX B

SUPREME COURT, STATE OF COLORADO

No.

PETITION FOR RELIEF

(Filed July 2, 1985)

(Denied En Banc 10/17/85)

IN RE THE APPLICATION OF MICHAEL T. ROSE FOR ADMISSION TO THE BAR OF THE STATE OF COLORADO

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UNION FOUNDATION OF
COLORADO, INC.

Petitioner Michael T. Rose, through the American Civil Liberties Union Foundation of Colorado, Inc. and his attorneys, Morrison & Foerster, petitions this Honorable Court to: (1) declare the findings and recommendation by the Bar Committee of the Colorado State Board of Law Examiners ("Committee"), dated December 27, 1976, on Mr. Rose's initial application for admission to the Colorado Bar, null and void *ab initio* for lack of due process; (2) declare the Colorado Supreme Court's Order, dated January 6, 1977, denying Mr. Rose admission to the Colorado Bar, null and void *ab initio* for lack of due process;

(3) expunge the entire record of Mr. Rose's initial application to the Colorado Bar; and (4) release Mr. Rose from all rules and orders of confidentiality which prevent him from commenting on his initial application to the Colorado Bar.

In support of this Petition, Mr. Rose states as follows:[1]

1. In December, 1975, Mr. Rose applied for admission to the Colorado Bar. On December 3, 1976, the Committee voted to recommend to this Court that Mr. Rose's application be rejected. Letter from Barnard Houtchens to Colorado Supreme Court (December 6, 1976), 1 [hereinafter cited as "Houtchens Letter"].[2] By report dated December 27, 1976, the Committee transmitted its findings and recommendation to this Court. *Report of the Bar Committee Pursuant to C.R.C.P. Rule 212* [hereinafter cited as *"Committee Report"*].[3] On January 6, 1977, this Court denied Mr. Rose admission. Order, *In the Matter of the Application of Michael Thomas Rose for Admission to the Colorado Bar* (January 6, 1977).[4]

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[1]Mr. Rose is also submitting a Memorandum in Support of Petition for Relief ("Memorandum"), which more fully presents the factual and legal arguments which compel this Honorable Court to grant the relief requested in this Petition. The Memorandum contains all citations to legal authority.

Appendices cited in this Petition and in the Memorandum are being submitted under separate cover.

[2]Appendix 1.

[3]Appendix 2.

[4]Appendix 3.

2. On November 10, 1982, this Court repealed Colo. R. Civ. P. 201-220 and 222-225, which governed admission to the Colorado Bar when Mr. Rose was denied admission, and amended and reenacted them as Colo. R. Civ. P. 201. Colo. R. Civ. P. 201, unlike the rules in effect when Mr. Rose was denied admission, brought Colorado's admission procedure into compliance with the due process requirements of the Fifth and Fourteenth Amendments to the United States Constitution. Nevertheless, the procedure by which Mr. Rose was denied admission in 1977 lacked fundamental elements of due process, including:

(a) Due process requires that an applicant be notified of the charges against him and upon which he is to be denied admission. *E.g., Willner v. The Committee on Character and Fitness*, 373 U.S. 96, 105 (1963) (*See*, Memorandum at 3). The applicant must be notified before a final decision is reached, so he has a meaningful opportunity to refute the charges at a full hearing. Mr. Rose was denied this right. He was never notified, orally or in writing, until after his application was rejected, of the charges under consideration or upon which the Committee intended to recommend that his application be rejected. Even worse, and most critically, the Committee misinformed Mr. Rose that it was not considering particular charges which it later used as grounds to deny him admission. *Reporter's Transcript of April 30, 1976 Hearing*, 65-66 [hereinafter cited as "*April 30 Transcript*"][5]; *Reporter's Transcript of June 4, 1976 Hearing*, 14-15

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[5]Appendix 4.

[hereinafter cited as *"June 4 Transcript"*].[6] Indeed, on numerous occasions during the hearings, even Committee members expressed confusion as to the nature of the charges. *April 30 Transcript, supra,* at 57-59, 65-66.[7] By failing to inform Mr. Rose — indeed by misinforming him — of the charges, the Committee denied Mr. Rose the opportunity to rebut the charges, which is a cornerstone of procedural due process.

(b) Due process requires that the applicant be given a full hearing to rebut the charges against him. *E.g., Willner,* 373 U.S. at 105 (*See,* Memorandum at 14). Mr. Rose was denied this right. On December 3, 1976, six members of the Bar Committee voted five to one to deny Mr. Rose admission. Houtchens Letter, *supra* p. 2, at 1.[8] Before the vote "hearings"[9] in which Mr. Rose participated were held on April 30, 1976 and June 4, 1976. *April 30 Transcript, supra* p. 3;[10] *June 4 Transcript, supra* p. 3.[11] Committee member Cover Mendenhall did not attend either hearing and members Donald S. Stubbs and Bernard Houtchens, as well as Cover Mendenhall, did not attend the June 4, 1976 hearing. (Compare *April 30 Transcript,*

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[6]Appendix 5.

[7]Appendix 4.

[8]Appendix 1.

[9]Committee members variously characterized these "hearings" as an "interview," *April 30 Transcript, supra* p. 3, at 72, and as a "meeting." *June 4 Transcript, supra* p. 3, at 1.

[10]Appendix 4.

[11]Appendix 5.

supra p. 3,[12] and *June 4 Transcript, supra* p. 3,[13] with Houtchens Letter, *supra* p. 2, at 1).[14] Nevertheless, Messrs. Mendenhall, Stubbs and Houtchens voted to reject Mr. Rose's application. These members could not have reviewed transcripts of the testimony they had missed, including Mr. Rose's testimony, because transcripts were not prepared until after Mr. Rose was denied admission. Houtchens Letter, *supra* p. 2, at 1.[15] Thus, over one-half of the Committee members who voted to deny Mr. Rose admission failed to hear or review all the evidence, including all of Mr. Rose's testimony. Indeed, Mr. Mendenhall failed to hear or review any testimony, including any of Mr. Rose's testimony. This denied Mr. Rose the full hearing to which he was entitled by the Fifth and Fourteenth Amendments to the United States Constitution. *E.g. Willner*, 373 U.S. at 105.

(c) An applicant can not be denied admission based in part or in whole on *ex parte* statements and documents. *Id.* at 105-06. Rather, the applicant must be confronted with, and be given an opportunity to rebut, all evidence which is used ultimately to deny him admission. The applicant also must be given an opportunity to confront and to cross-examine his accusers, including the authors of the *ex parte* statements and documents. *Id.* The Committee violated these due process requirements. It did not disclose to Mr. Rose critical evidence used against him; there-

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[12]Appendix 4.

[13]Appendix 5.

[14]Appendix 1.

[15]*Id.*

fore, he was denied the right to confront and to rebut this evidence. The Committee also never produced, or gave Mr. Rose the opportunity and authority to confront, those individuals upon whose accusations the Committee and this Honorable Court denied him admission; therefore, Mr. Rose was denied the right to confront and to cross-examine his accusers, including the authors of the *ex parte* statements and documents. In sum, the Committee and this Court violated the due process proscription against using *ex parte* statements and documents as a basis to deny an applicant admission.

(d) In recommending to the Colorado Supreme Court that Mr. Rose be denied admission, the Committee stated that it had relied, among other sources, upon the April 30, 1976 and June 4, 1976 hearings, a letter dated September 24, 1976 from Richard F. Hennessey to the Colorado Board of Law Examiners [hereinafter cited as "*Hennessey Report*"][16], and the report of Committee member (now Honorable District Judge) Roger Cisneros, *Report by Roger Cisneros to Bar Committee* [hereinafter cited as "*Cisneros Report*"].[17] *Committee Report, supra* p. 2, at 1.[18] The Honorable District Judge Cisneros had attended both hearings, had investigated Mr. Rose for the Committee, and had recommended to the Committee and voted that he be

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[16]Appendix 6.

[17]Appendix 7.

[18]Appendix 2.

admitted to the Bar. *Cisneros Report, supra* p.6 at 2.[19] The *Hennessey Report*, on the other hand, was issued on September 24, 1976, over three months after the last hearing. Mr. Rose did not know that Mr. Hennessey was investigating him or of the existence of the *Hennessey Report* until after his application was rejected. He also neither was confronted with the *Hennessey Report* nor was given an opportunity to rebut its devastating and apparently dispositive conclusions. In the *Hennessey Report*, which was labeled "Personal and Confidential," Mr. Hennessey concluded that Mr. Rose was guilty of misconduct with which he was not charged. Although Mr. Hennessey interviewed numerous individuals who had a motive to malign Mr. Rose, he never interviewed Mr. Rose or any one of a number of people who would speak on his behalf. Because the investigation was covert, the individuals upon whose statements Mr. Hennessey concluded that Mr. Rose was guilty, were never produced for confrontation and for cross-examination by the Committee or by Mr. Rose. Moreover, Mr. Rose never had an opportunity to confront and to rebut the contents of those individuals' statements. Notwithstanding these due process inadequacies, after Mr. Rose was denied admission, he and his counsel were informed by Justice Groves that the *Hennessey Report* was "what sank" him. Affidavit of Michael T. Rose, ¶ 3 [hereinafter cited as "Rose Affidavit"].[20] The Committee's express reliance upon the *ex parte Hennessey Report* further denied Mr. Rose his due process right of confrontation and cross-examination.

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[19]Appendix 7.

[20]Appendix 8

(e) Justice Groves, who was disqualified from voting on Mr. Rose's application, nevertheless urged the other Justices of this Honorable Court, in two "Personal and Confidential" memoranda, to deny Mr. Rose admission. Memorandum from Justice James K. Groves to the Colorado Supreme Court (December 8, 1976);[21] Memorandum from Justice James K. Groves to the Colorado Supreme Court (January 5, 1977).[22]

3. Rather than subside over time, the injuries which Mr. Rose has suffered as a direct result of this denial of due process continue to escalate. As only one of many examples, on May 13, 1985, an attorney opposing Mr. Rose cited the Committee's findings as evidence that Mr. Rose is dishonest. Therefore, the attorney concluded, the statements upon which Mr. Rose based a motion for partial summary judgment should not be accepted as true. Respondents' Memorandum in Opposition to Michael T. Rose's Motion for Partial Summary Judgment, *Rose v. Monex International, Ltd.*, 3, n.4, and 10, n.12, CFTC Docket No. 84-R51 (Commodity Futures Trading Commission May 13, 1985).[23] This is but one example of the continuing damage to Mr. Rose directly resulting from the Colorado proceedings.

4. Neither Mr. Rose, the Committee nor this Honorable Court could have foreseen the extent to which these due process violations have wreaked havoc with Mr. Rose's personal and professional reputations. It has become vir-

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[21]Appendix 9.

[22]Appendix 10.

[23]Appendix 11.

tually impossible for Mr. Rose to practice law and to engage in public discourse about issues in which he is interested, without being confronted with the damaging findings and conclusions of the Committee and of this Honorable Court. This Honorable Court now is positioned to redress these wrongs. Mr. Rose asks to be treated no differently from the manner prescribed by this Court in 1982 in Colo. R. Civ. P. 201.

5. On October 27, 1978, Mr. Rose applied for admission to practice before the United States Supreme Court. The application did not require him to disclose that he had been denied admission to the Colorado Bar. In the interest of candor, however, he did so.

6. Michael Rodak, Jr., Clerk of the United States Supreme Court, requested the Colorado Supreme Court to provide the United States Supreme Court with information about Mr. Rose. Letter from Michael Rodak, Jr. to Justice James K. Groves (January 22, 1979) [hereinafter cited as "Rodak Letter"].[24] Mr. Rodak expressly represented that any information provided "would be held in the strictest confidence." *Id.*

7. Justice Groves forwarded the Rodak letter to Mr. Rose and asked him for authorization to provide information from his file to the United States Supreme Court. Letter from Justice James K. Groves to Michael T. Rose (March 5, 1979) [hereinafter cited as "Groves Letter"].[25]

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[24]Appendix 12.

[25]Appendix 13.

Mr. Rose consented. Mr. Rose's consent was based on Mr. Rodak's written assurance that the information "would be held in the strictest confidence." Rodak Letter, *supra*.[26] Mr. Rose's reliance on this representation was patently reasonable, since it was contained in the Rodak Letter which Justice Groves had forwarded to Mr. Rose.

8. Justice Groves supplied the United States Supreme Court with information critical of Mr. Rose, but with none of the numerous letters and affidavits favorable to him. Letter from Justice James K. Groves to Michael Rodak, Jr. (April 17, 1979).[27]

9. On November 27, 1978, the United States Supreme Court informed Mr. Rose that his application to the United States Supreme Court would be held in abeyance pending action on his reapplication to the Colorado Bar. Letter from Michael Rodak, Jr., Clerk of the United States Supreme Court, to Michael P. Rose (November 27, 1978).[28]

10. On December 1, 1978, while his application to the United States Supreme Court was pending, Mr. Rose reapplied for admission to the Colorado Bar.

11. In approximately May, 1979, a Disciplinary Prosecutor was appointed to investigate Mr. Rose, numerous additional allegations were made against him, and a second Disciplinary Prosecutor was appointed to prosecute those allegations.

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[26]Appendix 12.

[27]Appendix 14.

[28]Appendix 15.

12. On January 3, 1980, this Court appointed James Bunch as Special Master to hold hearings on the allegations against Mr. Rose. However, upon Mr. Rose's motion, Mr. Bunch disqualified himself because his wife was employed by the Colorado Supreme Court Grievance Committee and Donald S. Stubbs, a Committee member who recommended rejecting Mr. Rose's initial application, was Mr. Bunch's partner. The Honorable Judge Harry S. Silverstein replaced Mr. Bunch as Special Master.

13. The new allegations against Mr. Rose were based in part upon an extensive, secret, *ex parte* file of information and allegations provided to the Disciplinary Prosecutor by Justice Groves. Affidavit of Jordon Hochstadt and Richard Strauss, ¶¶ 6-7 [hereinafter cited as "Hochstadt and Strauss Affidavit"][29] Special Master Bunch denied Mr. Rose's request to be supplied a copy of this file, stating that he had been directed to do so by Justice Groves. *Id.* at ¶¶ 8-10.[30] As a result, Mr. Rose was required to defend himself without the benefit of the file used against him by the Disciplinary Prosecutor.

14. A hearing on Mr. Rose's reapplication and on the charges against him was held on February 16, 17 and 18, 1981. On May 8, 1981, the Honorable Judge Harry S. Silverstein, Jr. concluded that Mr. Rose was morally and ethically qualified to practice law and recommended that he be admitted to the Colorado Bar. Master's Report, *In re the Application of Michael T. Rose for Admission to*

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[29]Appendix 16.

[30]*Id.*

the Bar of the State of Colorado (May 8, 1981) [hereinafter cited as "Master's Report"].[31] On May 22, 1981, Mr. Rose was admitted.

15. The Honorable Judge Silverstein expressly ruled that it was not within his jurisdiction to consider the Committee's original findings and recommendation. *Id.* at 2.

16. It cannot be overemphasized that Mr. Rose's subsequent admission has not curtailed the extensive damage to him which, to this day, continues to result from the initial rejection. Judge Silverstein concluded that Mr. Rose was rehabilitated from any conduct which caused the initial rejection. There was no consideration of whether the Committee's original findings and recommendation were erroneous or void for lack of due process. The original findings and recommendation continue to damage Mr. Rose personally and professionally. This damage is exacerbated by this Honorable Court's rules and orders of confidentiality, which prevent Mr. Rose from explaining his record and which infringe upon his First Amendment rights.

17. If, during the initial review process, the Committee had afforded due process to Mr. Rose, the Committee's findings may not have been adverse to him, Mr. Rose may not have been denied admission, and his injuries may have been lessened significantly. Mr. Rose believes the Committee's findings and recommendation were erroneous; that determinations of character and fitness to practice law are highly subjective and cannot be properly be made

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[31] Appendix 17.

absent proceedings that comply with due process; and that he would not have been denied admission and would not have had adverse findings made against him, if the Committtee and this Honorable Court had proceeded fairly.

18. Mr. Rose next petitioned the United States Supreme Court to reconsider his application. On March 8, 1982, by a seven to two vote, he was admitted to practice before the United States Supreme Court. *In re Admission of Rose*, 50 U.S.L.W. 3714 (March 8, 1982) (Stevens, J., concurring, Burger, C.J., O'Connor, J., dissenting).

19. The Honorable Chief Justice Warren Burger wrote and published a scathing dissent to the majority opinion. *Id.* In his dissent, Justice Burger published extremely damaging misrepresentations about Mr. Rose. These statements were based upon the supposedly confidential information which Justice Groves had provided to the Supreme Court. The publication of this information was in derogation of the Supreme Court's explicit undertaking that information about Mr. Rose "would be held in strictest confidence." Rodak Letter, *supra* p.10.[32]

20. Chief Justice Burger's dissent also was reported in the *Washington Post*, the *New York Times*, the *National Law Journal*, the *Denver Post*, the *Colorado Springs Sun*, and other publications.[33]

21. The widespread publication and dissemination of inaccurate, misleading and defamatory information, which originated from the Colorado proceedings, have seriously damaged Mr. Rose's personal and professional reputations,

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[32]Appendix 12.

[33]Appendix 18.

and have caused him extreme emotional distress and other injuries.

22. Two prominent Wall Street law firms and one federal agency either withdrew or suspended employment offers to Mr. Rose. Their decisions were based on Mr. Rose's disclosure of the Colorado proceedings. Rose Affidavit, *supra* p. 8, at ¶ 4D.

23. Additionally, potential clients, including Colonel Donald C. Odegard, Sr., have been discouraged or have refrained from employing Mr. Rose as counsel, because of the Colorado proceedings and the United States Supreme Court's unauthorized publication of the information provided by Justice Groves. Affidavit of Colonel Donald C. Odegard, Jr.[34]

24. Because of the Colorado proceedings, Tommy Yearout, an Alabama attorney, initially refused to continue representing Mr. Rose in a contract dispute. Letter from Tommy Yearout to Michael T. Rose (August 13, 1982).[35]

25. Certain rules and orders prevent Mr. Rose from exercising his First Amendment right to comment on the circumstances surrounding the Colorado proceedings. First, Colo. R. Civ. P. 217, which was in effect when Mr. Rose's application was denied, provides that information provided to the Committee "shall be held confidential by the Committee and the Court unless in the opinion of the Court its disclosure becomes necessary in a hearing on the application." Second, in January, 1980, at Mr. Rose's re-

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[34]Appendix 19.

[35]Appendix 20.

quest, Special Master Bunch entered an Order of Confidentiality. Hochstadt and Strauss Affidavit, *supra* p. 12, at ¶¶ 11-12.[36] On October 18, 1982, Mr. Rose filed with this Court a Motion to Withdraw Rules and Orders of Confidentiality. Motion to Withdraw Rules and Orders of Confidentiality, *In re the Application of Michael T. Rose for Admission to the Bar of the State of Colorado* (October 18, 1982).[37] On October 27, 1982, this Court advised Mr. Rose that he could comment publicly only on the documents which Justice Groves had forwarded to the United States Supreme Court. As to all other documents and matters, however, the Court refused to "grant permission to waive the rules and orders of confidentiality." Letter from David W. Brezina, Clerk of the Colorado Supreme Court, to Michael T. Rose (October 27, 1982.)[38]

26. These rules and orders exacerbate Mr. Rose's injuries because they prevent him from explaining his understanding of the Colorado proceedings. They are most injurious when Mr. Rose is faced with inquiries from existing and potential clients, potential employers, other attorneys, other military officers, state bar admission committees[39] and the press.

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[36]Appendix 16.

[37]Appendix 21.

[38]Appendix 22.

[39]Mr. Rose is licensed to practice law in Colorado, California, Minnesota, Pennsylvania and South Carolina, and in several Federal courts, including the United States Supreme Court. His application for admission to at least one state Supreme Court is being held in abeyance pending a decision on this Petition. *Rose Affidavit, supra* p.8, at ¶ 4F.

27. Little, if anything, about the reasons for the rejection of Mr. Rose's application remains confidential. What does remain confidential is the evidence favorable to Mr. Rose and the unfair manner in which he was treated. This is an additional reason for releasing him from the rules and orders of confidentiality. Despite the United States Supreme Court's assurances, the allegations against Mr. Rose arising from the Colorado proceedings were disseminated widely as a result of Chief Justice Burger's published dissent. Additionally, Justice Groves provided to a United States Congressman "more [information about Mr. Rose] than we generally disclose without the permission of the applicant." Letter from Justice James K. Groves to Congressman Charles H. Wilson (October 26, 1977).[40] Justice Groves did request the Congressman to "treat [the information] as rather privileged." *Id.* Third, Justice Groves kept a "mailing list," on which he placed a United States Congressman and an unknown number of other persons, to whom he provided information about "the future of Mr. Rose." *Id.*

28. Mr. Rose finds himself in an untenable position. The rules and orders of confidentiality did not prevent information adverse to him from being disseminated. Nevertheless, these very same rules and orders prevent him from responding to inquiries resulting from the dissemination of the damaging information. This is unfair. This Honorable Court should release Mr. Rose from this cage of silence.

29. This Honorable Court's restrictions on Mr. Rose's ability to comment regarding his initial application to the

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[40]Appendix 23.

Colorado Bar also abridge his rights under the First Amendment to the United States Constitution.

WHEREFORE, Petitioner Michael T. Rose respectfully requests this Honorable Court to issue an Order:

1. Declaring the findings and recommendation by the Bar Committee of the Colorado State Board of Law Examiners, dated December 27, 1976, on Mr. Rose's initial application for admission to the Colorado Bar, null and void *ab initio* for lack of due process;

2. Declaring the Order by the Colorado Supreme Court, dated January 6, 1977, — that Mr. Rose not be admitted to the Colorado Bar — null and void *ab initio* for lack of due process;

3. Expunging the entire record of Mr. Rose's initial application to the Colorado Bar;

4. Releasing Mr. Rose from all rules and orders of confidentiality which prevent him from explaining his record; and

5. Granting Mr. Rose any other relief which this Honorable Court deems appropriate.

Dated July 2nd, 1985.

/s/ Robert F. Hanley (No. 12672)
John V. McDermott (No. 11854)

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ATTORNEYS FOR MICHAEL T. ROSE

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF COLORADO, INC.

APPENDIX C

Colorado Rules of Civil Procedure

Rule 216. Class C—Notice of Applications—Objections—Reports and Recommendations

Within ten days after each examination of applicants in Class C the Law Committee shall furnish to the Clerk of the Supreme Court, the Clerk of the District Court in each county, and to the Secretary of the Colorado Bar Association, the names and addresses of all persons who have taken said examination. Each clerk shall immediately post the same in a conspicuous place in his office, keep them so posted for a period of thirty days, and furnish them to newspapers as may be requested. Dates of posting shall be certified on each notice by the clerks of the respective courts.

Any person may present to the Law Committee any information bearing upon the question of the propriety of the admission of any such applicant; and any persons, or any Bar association may object to such admission. Should information so presented relate to the ethical or moral qualifications of the applicant it shall be immediately referred to the Bar Committee for its investigation and report. All such information shall be held confidential by the Committee and the Court unless in the opinion of the Court its disclosure becomes necessary in a hearing on the application. The reports of the Bar Committee on applicants in Class C, shall be delivered to the Secretary of the Law Committee within twenty days after the final day of posting in the office of the Clerk of the Supreme Court of the list of applicants. Said reports shall cover any objections made to the admission of any applicant and

all special information filed with the Committee, and shall set forth the recommendation of each Committee and reasons therefor.

(Amended and effective March 28, 1975.)

APPENDIX D

Colorado Rules of Civil Procedure
Rule 217. Hearing

As soon as convenient after the receipt of the reports of the Committees the Court will consider the same and order that the several applicants be or be not admitted, or that their applications be continued for further hearing or consideration.

No applicant will be refused admission by reason of any ethical or moral disqualification without an opportunity to be heard as the Court shall direct.

A failing examinee, who has failed the Colorado bar examination more than once, who believes he should have passed the last examination, may petition the Court, setting forth concisely the reasons why he should have received a passing grade. The fee for filing such petition, if any, and assessment of costs of any proceeding, if any, will be as required by the court. If it appears that the petition is without merit it shall be summarily denied. Otherwise, the matter shall be referred to a member of the Law Committee, selected by the Chief Justice or by the Chairman of the Law Committee who shall give the examinee the opportunity to appear and be heard. The examiner shall transmit his findings and recommendations to the Chairman of the Law Committee. The Law Committee, acting en banc or by committee appointed by the Chairman, shall review the findings and recommendations and transmit them to the Court with the Committee's recommendation. The Court shall notify the examinee of its action on the petition. As to an examinee who has taken

the Colorado bar examination only once and failed, the taking of a subsequent examination shall be deemed review of the examinee's answers to the first examination.

(Amended and effective November 13, 1975.)

APPENDIX E

IN THE SUPREME COURT IN AND FOR THE STATE OF COLORADO

No. .....

In the Matter of the Application of
MICHAEL THOMAS ROSE, a/k/a Michael T. Rose and Michael Rose,
For Admission to the Bar of the Supreme Court of the State of Colorado

AMENDED PETITION FOR ADMISSION

(Filed May 31, 1979)

COMES NOW, the Petitioner, *pro se*, and hereby petitions this Honorable Court to grant the Petitioner admission to the Bar of the Supreme Court of the State of Colorado and to authorize and empower the Petitioner to appear in all Courts of Record in the State of Colorado and to practice as an attorney and counselor at law.

AS GROUNDS THEREFOR, Petitioner states unto this Court as follows:

1. On or about January 6, 1978, this Court, *nunc pro tunc*, denied Petitioner admission to the Bar of the Supreme Court of the State of Colorado based upon findings and a recommendation to the Bar Committee of the State Board of Law Examiners of the State of Colorado. A copy of said recommendation has been previously filed with the Court.

2. Petitioner effectively has been denied admission to the Bar of the Supreme Court of the State of Colorado since May, 1976, the month during which Petitioner would have been admitted to the Bar of the Supreme Court of

the State of Colorado but for the investigation of Petitioner by and the recommendation of the Bar Committee of the State Board of Law Examiners of the State of Colorado that Petitioner not be admitted to the Bar of the Supreme Court of the State of Colorado, as referred to hereinabove.

3. In a petition filed with this Court on or about January 6, 1977, Petitioner prayed that this Court either admit Petitioner to the Bar of the Supreme Court of the State of Colorado or grant Petitioner a *de novo* hearing regarding the grounds denying Petitioner admission to the Bar of the Supreme Court of the State of Colorado. As grounds for said Petition, Petitioner alleged that Petitioner had been denied admission to the Bar of the Supreme Court of the State of Colorado in violation of Rule 217 of the Colorado Rules of Civil Procedure and of the Due Process Clauses of the Fourteenth Amendment to the United States Constitution and of the Constitution of the State of Colorado, in that:

A. All five (5) members of the Bar Committee of the State Board of Law Examiners of the State of Colorado who recommended, as hereinabove described, that Petitioner not be admitted to the Bar of the Supreme Court of the State of Colorado failed to attend one or both of the hearings, held on April 30, 1976, and on June 4, 1976, respectively, regarding the moral and ethical fitness of Petitioner (the one member of said Bar Committee who did vote to recommend that Petitioner be admitted to the Bar of the Supreme Court of the State of Colorado did attend both of said hearings);

B. As of the date that the Bar Committee of the State Board of Law Examiners of the State of

Colorado recommended that Petitioner not be admitted to the Bar of the Supreme Court of the State of Colorado, no transcript of either of the hearings referred to hereinabove had been prepared, and, therefore, said members of said Bar Committee who did not attend one or both of said hearings did not base their recommendation not to admit Petitioner to the Bar of the Supreme Court of the State of Colorado upon an evaluation of Petitioner's explanation of the circumstances regarding the conduct upon which was based the denial to Petitioner of admission to the Bar of the Supreme Court of the State of Colorado;

C. At no time prior to the hearings referred to hereinabove was Petitioner specifically appraised of the nature of the reasons for said Bar Committee members failing to be convinced of Petitioner's good moral character;

D. At no time during the course of the hearings referred to hereinabove was Petitioner afforded the opportunity to confront and to cross-examine his accusers;

E. At no time before the denial of Petitioner's application to the Bar of the Supreme Court of the State of Colorado was Petitioner given notice of or an opportunity to refute and to provide evidence with regard to all *ex parte* statements and reports regarding Petitioner; and

F. At no time during the course of the hearings referred to hereinabove did Petitioner have the opportunity to present evidence to the entire Bar Committee of the State Board of Law Examiners of the State of Colorado.

Said Petition was denied by this Court, *en banc*, on April 21, 1977.

4. As a result of said denial to Petitioner of admission to the Bar of the Supreme Court of the State of Colorado, Petitioner has been prohibited from practicing law in his home State of Colorado; has been forced to move outside of Colorado in order for Petitioner to earn his living practicing his profession; has incurred stigma; has suffered great emotional distress and damage to Petitioner's esteem and personal and professional reputations; has had adversely affected and will continue to have adversely affected the possibility that Petitioner might be selected for membership in the Bars of other jurisdictions and for competitive opportunities for which Petitioner has applied and may apply; and has been denied, and continues to be denied, employment opportunities which Petitioner no longer would be denied if Petitioner were admitted to the Bar of the Supreme Court of the State of Colorado. Denial to Petitioner of admission to the Bar of the Supreme Court of the State of Colorado has had a severe adverse effect and will continue to have a severe adverse effect on the course of Petitioner's career. As a result of the above, Petitioner believes that he has been punished sufficiently for his past indiscretion and that nothing further would be gained, including the obtaining of justice or the purpose for which Petitioner was denied admission to the Colorado Bar, by causing Petitioner to continue to suffer, as hereinabove described.

5. The findings referred to hereinabove of said Bar Committee of the State Board of Law Examiners of the State of Colorado no longer are valid and no longer constitute grounds for denying Petitioner admission to the Bar of the Supreme Court of the State of Colorado, for the following reasons:

A. The conclusion reached by the Bar Committee of the State Board of Law Examiners that the "inclinations evidenced by the applicant's conduct are likely to be carried over by the applicant in the practice of law" has proved not to be true, as shown by the fact that since August, 1977, Petitioner has been employed by the law firm of Robins, Davis & Lyons, 1210 Minnesota Building, St. Paul, Minnesota 55101, and, as evidenced by the five Affidavits, attached hereto and incorporated herein by partners of said law firm for whom Petitioner has been working, during said employment Petitioner has engaged in no conduct in any manner adversely reflecting upon Petitioner's integrity or fitness to practice law;

B. Petitioner was admitted in May, 1978, to the Bar of the Supreme Court of the State of Minnesota, after Petitioner passed the Bar Examination administered by the Board of Law Examiners of the State of Minnesota and after an investigation by the Board of Law Examiners of the State of Minnesota of the qualifications of Petitioner to practice law, including, but not limited to, the circumstances of the denial by this Court of Petitioner's admission to the Bar of the Supreme Court of the State of Colorado;

C. Petitioner never knowingly has made any misstatement or misrepresentation concerning his professional status or in any other professional context;

D. Petitioner's suspension by the Supreme Court of the State of Pennsylvania for Petitioner's inadvertent failure to complete required annual registration forms immediately was revoked by, and Petitioner immediately was reinstated in good standing to, the Bar of the Supreme Court of the State of Pennsylvania, after Petitioner completed said registration forms, immediately after Petitioner learned of said suspension; since said re-

instatement, Petitioner has completed all registration forms required by, and Petitioner has remained a member in good standing of, the Bar of the Supreme Court of the State of Pennsylvania;

E. Petitioner's "lack of candor in business and professional matters" and "continued violation of reasonable rules of conduct", found in December, 1976, by the Bar Committee of the Supreme Court of the State of Colorado to exist as a result of Petitioner's activities as a law clerk in a Colorado law firm in early 1976, resulted not from dishonesty or lack of integrity on the part of Petitioner but from poor judgment, inexperience and a lack of supervision and guidance of Petitioner in the private practice of law, and has been mitigated both by the denial to Petitioner of admission to the Bar of this Court and by the experience and guidance obtained by Petitioner during Petitioner's employment with Robins, Davis & Lyons in Minnesota; and

F. Petitioner is a member in good standing of the Bars of the Supreme Courts of the States of Pennsylvania, California and Minnesota and of the United States Court of Military Appeals, the United States Court of Claims, the United States District Court of the District of Minnesota and the United States Fifth Circuit Court of Appeals, and at all times has remained in good standing as a member of each said respective Bar since becoming a member of each said respective Bar, except for the temporary suspension of Petitioner from the Bar of the Supreme Court of the State of Pennsylvania for Petitioner's inadvertent failure to complete required annual registration forms, as hereinabove described.

6. Petitioner has passed the Bar Examinations of the States of Colorado, California, Pennsylvania and Minnesota.

7. Petitioner understands the impropriety of his actions upon which were based his denial of admission to the Bar of the Supreme Court of the State of Colorado; Petitioner earnestly and diligently has attempted to conduct himself according to the highest standards of ethics of his profession and Petitioner shows into this Court that Petitioner has put the knowledge and experience gained from the Court's previous denial of his admission to the Bar of this State to good use, as evidenced by Petitioner's status and good standing in the Bars of the States of Minnesota, California and Pennsylvania, and of other Courts hereinabove described, and by Petitioner's lack of any professional misconduct since the actions constituting the grounds for Petitioner's denial of admission to the Bar of the Supreme Court of the State of Colorado.

8. Petitioner now possesses the moral and ethical qualifications required for Petitioner to counsel and advise others in the conduct of their affairs and Petitioner no longer should be disqualified or prejudiced by the prior findings, conclusions and recommendations of the Bar Committee of the State Board of Law Examiners of the State of Colorado.

WHEREFORE, Petitioner prays that this Court admit Petitioner to the Bar of the Supreme Court of the State of Colorado and authorize and empower Petitioner to appear in all Courts of Record and to practice as an attorney and counselor at law in the State of Colorado.

Respectfully submitted,
Michael T. Rose
Pro Se

Petitioner's Address:
c/o Robins, Davis & Lyons
1210 Minnesota Building
St. Paul, Minnesota 55101
Telephone: (612) 224-5884 (office)
(612) 633-3018 (home)

STATE OF MINNESOTA)
) SS. *AFFIDAVIT*
COUNTY OF RAMSEY)

MICHAEL THOMAS ROSE, a/k/a Michael T. Rose and Michael Rose, of lawful age and being first duly sworn upon his oath, deposes and says:

1. That he is the Petitioner in the foregoing Amended Petition for Admission.

2. That he has read said Petition and that the matters stated therein are true and correct to his own best knowledge and belief.

/s/ Michael T. Rose

Subscribed and sworn to before me
this 30th day of May, 1979.
/s/ Derene Quist
NOTARY PUBLIC
My Commission Expires: Mar. 7, 1984.

(Notary Stamp)

APPENDIX F

IN THE SUPREME COURT
OF THE STATE OF COLORADO

IN RE:

Application for Admission to
The Bar of This Court of:

MICHAEL THOMAS ROSE

APPLICANT'S MOTION TO
DISMISS REPORT OF
SPECIAL COUNSEL

(Filed February 10, 1980)

COMES NOW, Applicant above-named by and through his attorneys, HOCHSTADT, STRAW & DAVIS, P.C. and hereby moves that allegations contained in Paragraphs 1, 2, 3, 6 and 7 of Report of Special Counsel be dismissed and as grounds therefor shows as follows:

1. With respect to the allegations contained in Paragraph 1, which allegations are based upon the report of December 27, 1976 of the Bar Committee of the Board of Law Examiners, Applicant states as follows:

a. Applicant has admitted in the Application which is the subject matter of the present inquiry, that he has been found to have committed certain improper acts during 1976, which acts are set forth in Exhibit "A" to the Report of Special Counsel.

b. Applicant asserts that the findings and subsequent Order of Denial of the Supreme Court of Colorado are res judicata and no useful purpose would be served to relitigate the issues raised therein.

c. Applicant further asserts that the Report of Special Counsel does not indicate any acts of professional misconduct which may have been committed by the Appli-

cant subsequent to December, 1976, which further acts relate to acts of impropriety set forth in said Exhibit "A".

d. Applicant alleges that he has earnestly and diligently attempted to conduct himself according to the highest standards of ethics in his personal and professional life since December, 1976 and has submitted affidavits from several members his former employer, the law firm of Robins, Davis & Lyons attesting to such conduct.

2. With respect to Paragraph 2 of the Report of Special Counsel, Applicant alleges as follows:

a. That matters set forth in Paragraph 2 were initially investigated by Committee Counsel, Richard F. Hennesey, Esq. and were contained in the Report to the Bar Committee authored by said Committee Counsel.

b. The Bar Committee considered the matters which are the subject matter of the allegations contained in Paragraph 2 of the Report of Special Counsel and made no findings of impropriety on behalf of the Applicant with respect to the allegations contained in Paragraph 2 of the Report of Special Counsel.

c. The said matters, having been considered and decided by the Bar Committee, is a bar to the matters being raised herein, and Special Counsel is estopped from collaterally attacking or re-opening the same in these proceedings.

3. With respect to the matters set forth in Paragraph 3 of the Report of Special Counsel, Applicant asserts as follows:

a. That at the time of his original Application for Admission, Applicant disclosed that while he was a

Cadet at the United States Air Force Academy he had been charged and found guilty of "miscellaneous minor infractions of regulations; violation of Cadet Honor Code" and as a result received "demerits, hours, confinement" and was "granted 'discretion' and allowed to remain at the academy".

b. As a result of such disclosure, the matters set forth in Paragraph 3 of the Report of Special Counsel were previously before the Bar Committee, the Board of Law Examiners, and the Supreme Court of the State of Colorado. Neither the Bar Committee, the Board of Law Examiners nor the Supreme Court of Colorado made any findings of improriety relating to the allegations of Paragraph 3 of the Report of Special Counsel which would be sufficient to deny admission to the Bar of the State of Colorado.

c. That the matters set forth in Paragraph 3 of the Report of Special Counsel were previously before and considered by the Bar Committee, the Board of Law Examiners and the Supreme Court of the State of Colorado, is now a bar to the matters being raised in this proceeding, and Special Counsel is estopped from collaterally attacking or re-opening the matters in this proceeding.

4. With rspect to the matters raised in Paragraph 6 of the Report of Special Counsel, Applicant alleges as follows:

a. Applicant has been denied access to documents relevant to the Applicant's defenses to the allegations contained in Paragraph 6 by both the accuser and a Member of the Colorado Supreme Court, although Special Counsel has had access to such documents.

b. That Applicant has been denied and continues to be denied a basic Constitutional Right of cross examination and confrontation of his accuser.

c. That because of the denial of such Constitutional Right, any finding of wrongdoing on the part of Applicant is suspect and can not form the basis for his denial to practice law in the State of Colorado.

5. With respect to the Allegations contained in Paragraph 7 of the Report of Special Counsel, Applicant alleges as follows:

a. That the matters referred to in Paragraph 7 of the Report of Special Counsel have heretofore been litigated in the District Court in and for the County of Jefferson, State of Colorado.

b. Gollehon was represented by able counsel and Applicant was represented by able counsel.

c. At the conclusion of the Trial, the Honorable Winston Wolvington made Findings of Fact, Conclusions of Law and Judgment, a copy of which is attached hereto and made a part hereof as Exhibit "1".

d. It is submitted that there was no finding of any wrongdoing on the part of the Applicant nor of technical deficiencies in the documents drafted by the Applicant as is asserted in the Report of Special Counsel, rather the Court found that certain conditions precedent had not occurred, and thusly the Applicant was not liable.

e. That the matters referred to in Paragraph 7 of the Report of Special Counsel have been the subject of Judicial Determination is now a bar for the matters to be

considered in the within proceeding and Special Counsel is estopped to collaterally attack or re-open such matter.

WHEREFORE, Applicant prays that the matters raised in Paragraphs 1, 2, 3, 6, and 7 of the Report of Special Counsel be dismissed for the reasons set forth above.

Respectfully Submitted,

HOCHSTADT, STRAW & DAVIS, P.C.

/s/ Jordan Hochstadt, #106
1700 Broadway, Suite 1211
Denver, Colorado 80290
839-5809

APPENDIX G

LAW OFFICES
ROBINS, DAVIS & LYONS
1210 Minnesota Building
Saint Paul, Minnesota 55101
Telephone (612) 224-5884

March 16, 1979

The Honorable James K. Groves
Justice
Supreme Court, State of Colorado
2 East 14th Avenue, Room 416
Denver, Colorado 80203

Dear Justice Groves:

Thank you very much for your letter to me dated March 5, 1979, and the letter enclosed therewith to you from Mr. Michael Rodak, Jr., Clerk of the Supreme Court of the United States. Thank you in particular for protecting my privacy by declining to provide information about me without my permission.

You have my permission to disclose to the United States Supreme Court information and documents in the possession of the Colorado Supreme Court which may assist in evaluating my character and fitness to be a member of the Bar of the Supreme Court of the United States. I ask that you provide said information and documents as soon as possible. Please inform me of all information, and send me a copy of all documents, regarding me that you submit to the United States Supreme Court.

Sincerely,

/s/ Michael T. Rose

MTR/jh

cc: Mr. Michael Rodak, Jr.

APPENDIX H

SUPREME COURT, STATE OF COLORADO

No. ————

MEMORANDUM IN SUPPORT OF
PETITION FOR RELIEF

(Filed July 2, 1985)

IN RE THE APPLICATION OF MICHAEL T. ROSE
FOR ADMISSION TO THE BAR OF THE STATE OF
COLORADO

MORRISON & FOERSTER
Robert F. Hanley (12672)
John V. McDermott (11854)
3100 Columbia Plaza
1670 Broadway
Denver, Colorado 80202
(303) 831-1100

ATTORNEYS FOR PETITIONER
MICHAEL T. ROSE

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF
COLORADO, INC.

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Willner v. The Committee on Charter and Fitness, 373 U.S. 96 (1963) 3, 4, 5, 6, 10, 13, 14, 16, 17, 21. 22

(p. 1) Petitioner Michael T. Rose, through the American Civil Liberties Union Foundation of Colorado, Inc. and his attorneys, Morrison & Foerster, submits this Memorandum in Support of Petition for Relief ("Memorandum").

I. INTRODUCTION

Mr. Rose was denied procedural due process when his application for admission to the Colorado Bar was rejected in 1977. This rejection, and the findings upon which it was based, have caused and continue to cause Mr. Rose serious and irreparable injury to his personal and professional reputations. The relief which Mr. Rose seeks in his Petition for Relief ("Petition") is necessary to reverse or at least to mitigate these injuries.

II. STATEMENT OF FACTS

The Petition presents the relevant facts.

III. SUMMARY OF ARGUMENT

In violation of the Fifth and Fourteenth Amendments to the United States Constitution, Mr. Rose was never notified of the charges against him and upon which he was to be denied admission, until after his application was rejected; in fact, Mr. Rose was misled as to the nature of the charges; Mr. Rose was denied a full hearing at which he could rebut the charges against him; over one-half of the Committee members who voted (p. 2) to deny Mr. Rose admission failed to hear or to review all of the evidence,

including some or all of Mr. Rose's testimony; one Committee member who voted to deny Mr. Rose admission failed to hear or to review any testimony; the decision to deny Mr. Rose admission was based at least in part on *ex parte* statements and documents; neither the Committee nor this Honorable Court produced for confrontation and cross examination, or gave Mr. Rose the authority to produce, the authors of the *ex parte* statements and documents; Mr. Rose was denied the right to review, to confront and to rebut the contents of the *ex parte* statements and documents; and the late Justice James K. Groves, who was disqualified from voting on Mr. Rose's application, nevertheless urged this Honorable Court to deny Mr. Rose's admission.

Finally, certain rules and orders of confidentiality bar Mr. Rose from commenting fully on the rejection of his application. These rules and orders deny Mr. Rose his right to free speech guaranteed by the First and Fourteenth Amendments to the United States Constitution. They are also patently unfair because he is questioned constantly about the widely-publicized adverse actions of the Committee and this Honorable Court, which have not remained confidential.

* * *

(p. 24)

B. *Certain Rules And Orders Of Confidentiality Bar Mr. Rose From Commenting On The Rejection Of His Application, Even Though He Is Questioned Constantly About The Widely-Publicized Adverse Actions Of The Committee And Of This Honorable Court. These Rules and Orders Are Patently Unfair And Violate His Right To Free Speech.*

Certain rules and orders by this Court bar Mr. Rose from commenting on the Colorado proceedings. These

rules and orders, and the devastating impact they have had and continue to have on Mr. Rose, are discussed at length in the Petition and in Mr. Rose's Affidavit.[32]

Two points require emphasis. First, little, if anything, about the reasons for rejecting Mr. Rose's application remains confidential. What does remain confidential is the evidence favorable to Mr. Rose and the unfair manner in which he was treated. Despite the United States Supreme Court's written assurance of confidentiality, the allegations against Mr. Rose developed in Colorado were disseminated widely in Chief Justice Burger's public dissent. Also, Justice Groves provided to a United States Congressman "more (p. 25) [information about Mr. Rose] than we generally disclose without the permission of the applicant." Letter from Justice Groves to Congressman Charles H. Wilson (October 26, 1977).[33] Justice Groves did request the Congressman to "treat [the information] as rather privileged." *Id.*[34] Finally, Justice Groves kept a "mailing list," on which he placed Congressman Wilson and an unknown number of other persons, to whom he provided information about "the future of Mr. Rose." *Id.*[35]

Second, Mr. Rose is in an untenable position. This Court's rules and orders of confidentiality did not prevent information adverse to him from being disseminated. Nevertheless, these very same rules and orders prevent him from responding to inquiries resulting from the publi-

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[32]Appendix 8.

[33]Appendix 23.

[34]*Id.*

[35]*Id.*

cation of the damaging information. This is patently unfair, especially because these rules and orders of confidentiality exist to protect, rather than to harm, the applicant. In fact, Colo. R. Civ. P. 201.10(c) now provides that the hearing "shall be confidential unless the applicant shall request that the hearing be public." Indeed, Special Master Bunch's order of confidentiality was issued only at the request of Mr. Rose for (p. 26) his own protection. Affidavit of Jordon Hochstadt and Richard S. Strauss, ¶¶11-12.[36] It also is noteworthy that Special Master Bunch later disqualified himself. *Id.* at ¶ 13.

These rules and orders of confidentiality also deny Mr. Rose his right to free speech guaranteed by the First and Fourteenth Amendments to the United States Constitution. *Polk v. State Bar of Texas*, 374 F.Supp. 784, 787-88 (N.D. Tex. 1974).

V. CONCLUSION

Mr. Rose, a graduate of the United States Air Force Academy, has spent a considerable portion of his career attempting to redress legal infirmities in the adjudicatory systems of the military academies. He authored a controversial article for the *New York University Law Review* which questioned the administration of the academies' conduct, honor and ethics systems. Rose, Michael T., *A Prayer for Relief: The Constitutional Infirmities of the Military Academies' Conduct, Honor and Ethics Systems* (New York University School of Law 1973).

Articles about Mr. Rose have appeared in the *New York Times*, the *Washington Post* and other news publica-

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[36]Appendix 16.

tions; he has appeared on *Sixty Minutes* and on other television (p. 27) programs; and he has lectured at and participated in various university panel discussions where he has discussed his views. He was the successful party in a seminal Freedom of Information Act lawsuit against the Air Force. *Department of the Air Force v. Rose*, 425 U.S. 352 (1976).

Mr. Rose believes that the complaints from Air Force officials, which prompted the Colorado proceedings, resulted from his criticism of the academies. If Mr. Rose had been given due process before he was denied admission, he may have been able to prove this.

The circumstances surrounding the Colorado proceedings are an albatross around Mr. Rose's neck which continue to damage severely his personal ond professional reputations. Individuals who disagree with Mr. Rose continually challenge his credibility based upon the Colorado proceedings. For example, on March 16, 1985, Senator Barry Goldwater, a member of the Air Force Academy Board of Visitors, characterized Mr. Rose as one "who went to law school and who was not admitted to the Colorado Bar on his initial try. . . ." Affidavit of Robert C. Moore, ¶4 [hereinafter cited as "Moore Affidavit"].[37] Moreover, the Public Information Office at (p. 28) the United States Air Force Academy has disseminated information about the Colorado proceedings to media sources in a deliberate attempt to undermine Mr. Rose's credibility. *Id.* at ¶ 5.

In Mr. Rose's Affidavit,[38] he sets forth the ongoing damage to him from, and repeated attempts by individuals

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[37]Appendix 28.

[38]Appendix 8.

to discredit him based upon, the Colorado proceedings. These challenges to Mr. Rose's credibility detract from the substance of his arguments and make it virtually impossible for him to continue his work. Whether one agrees or disagrees with Mr. Rose's views, he is entitled to speak freely.

Mr. Rose has lost many vaiuable personal and professional friends and associations due to the widespread publication of the findings and conclusions of the Colorado proceedings. Due to the Colorado proceedings, Mr. Rose has had valuable job offers withdrawn; his applications to two other state bars are being held in abeyance pending the outcome of this Petition or until Mr. Rose attends hearings to explain the Colorado proceedings; and Justice Burger's publicized statements about the Colorado proceedings have been requoted in legal briefs to undermine Mr. Rose's credibility in unrelated legal proceedings.

(p. 29) In sum, as long as the adverse Colorado findings about Mr. Rose stand, he cannot freely practice law, engage in business transactions, apply for a job, enter politics, retain or obtain support and friendships from individuals afraid of the stigma of being associated with him, and make meaningful public statements.

The proceedings which resulted in Mr. Rose being denied admission to the Colorado Bar were fraught with due process inadequacies. By granting Mr. Rose the requested relief an injustice will be partially rectified and Mr. Rose can proceed with his life and his work.

PETITIONER REQUESTS ORAL ARGUMENT.

July 2nd, 1985.

Respectfully submitted,

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